IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.3153 of 1997
With
Civil Writ Petition No.6967 of 1998

Lustre Box Manufacturing Co.Pvt.Ltd. Petitioner
Vs.
Shri Ramesh Chandra Gurbaxrai Gupta Respondent

With
Civil Writ Petition No.2822 of 2006

Lustre Box Manufacturing Co.Pvt.Ltd. Petitioner
Vs.
Shri Ramesh Chandra G. Gupta & anr. Respondents

With
Civil Writ Petition No.4393 of 2006

Shri Ram Kumar Agarwal Petitioner
Vs.
Luster Box Manufacturing Co.Pvt.Ltd.
and anr. Respondents

Mr.L.K.Mani for petitioner in W.P.Nos. 3153/97, 6967/98 and 2822/06.

Mr.S.R.Sawant for petitioner in W.P.No.4393/06.

Mr.G.M.Jain with Mr.Nitin Mulye for resp.no.1 in W.P.2822/06 & W.P.3153/97 and for resp.no.2 in W.P.No.4393/06.

Mr.N.K.Mudnaney for resp. in WP 6967/98.

CORAM: B.H.MARLAPALLE, J.

June 29, 2007.

P.C.

1. Heard the learned counsel for the respective parties. Admittedly all these petitions arise out of

some or the other interlocutory orders passed either by the Small Causes Court or the lower Appellate Court in the applications filed in RAE Suit No.426/1095 of 1995 or Appeal No.77 of 2004. The first three petitions have been admitted and interim relief has been granted in each of them. As a result thereof the trial of the suit as well as the hearing of the appeal has been stayed. In the first two petitions the stay has been operating for almost nine to ten years.

. In Writ Petition No.3153 of 1997 the petitioner - company has challenged the order dated 6/5/1997 passed by the Small Causes Court thereby allowing the Interim Notice No.940 of 1996. RAE Suit No.426/1095 of 1995 has been filed by Shri Ramesh Chandra Gurbaxrai Gupta @ Agarwal claiming therein that the he has become owner of the suit property which are the factory premises, on the basis of the letter dated 22nd December 1995 from Mr. Ramkumar Agarwal. It appears that the suit premiss belonged to M/s. Elite Auto Industries of which Mr.Ramkumar Agarwal was one of the partners and he claimed tenancy over the suit premises. In turn Mr.Ramkumar Agarwal inducted the petitioner - company M/s.

Luster Box Manufacturing Co. Pvt. Ltd. (new company) as a sub-tenant much prior to 1973 and, therefore, the said company claimed to have become a deemed tenant of the suit premises.

. In Writ Petition No.6967 of 1998 filed by the very same company, the order passed on 9th October 1998 thereby dismissing Revision Application No.5 of 1996 has been challenged. Interim Notice No.1819 of 1995 was taken out in RAE Suit No.426/1095 of 1995 (Stamp No.1373 of 1995) raising the preliminary issue of jurisdiction of the trial Court to entertain and decide the suit and by order dated 22/12/1995 the Court held that it had jurisdiction to entertain and try the suit. The said order dated 22/12/1995 came to be challenged in Revision Application No.5 of 1996. Thus Writ Petition No.6967 of 1998 deals with the preliminary issue of the Court's power to entertain and decide the suit.

. Writ Petition No.4393 of 2006 has been filed by Mr.Ramkumar Agarwal being aggrieved by the order dated 14/3/2006 passed by the Appellate Bench of the Small Cause Court thereby making Interim Notice No.1968 of 2004 filed in Appeal No.77 of 2004

absolute. By the said order the lower Appellate Court directed the name of Shri Ramesh Chandra Gupta @ Agarwal be brought on record as respondent in place of Shri Ramkumar Agarwal and the very same order has been challenged by M/s. Luster Box Manufacturing Co. Pvt. Ltd. in Writ Petition No.2822 of 2006.

2. It is the contention of M/s. Luster Box Manufacturing Co. Pvt. Ltd. that Mr. Ramesh Chandra Gupta @ Agarwal could not be successor owner of the suit property or the tenant as the case may be in place of Mr. Ramkuamr Agarwal, the partner of Elite Auto Industries and that the Courts below have wrongly held and accepted him to be the successor in interest of Shri Ramkumar Agarwal.

3. It was, therefore, suggested by the learned counsel for the parties that the issue whether Shri Ramesh Chandra Agarwal could be the successor in interest of the suit premises could be more appropriately decided if Shri Ramkumar Agarwal is brought on record as Defendant no.3. Mr.Jain, the learned counsel for the plaintiff in RAE Suit No.426/1095 of 1995, therefore, made a statement

across the bar that the plaintiff would apply to the Small Causes Court in the said suit for impleading Ramkumar Agarwal as defendant no.3 within two weeks from today. The learned counsel for the Company M/s. Lustre Box Manufacturing Co. Pvt. Ltd. has no objection to this proposition but further submitted that the issue of jurisdiction which is also the subject matter of challenge in Writ Petition No.3153 of 1997 is also required to be left open so as to be adjudicated more efficaciously after the inter se relationship between the plaintiff and Ramkumar Agarwal is adjudicated and all these issues including the issue of jurisdiction should be decided together on the basis of the evidence that may be adduced by the parties (both oral and documentary) as well as the arguments advanced across the bar.

4. Rather than keeping all these petitions pending and the main issue on which parties are at loggerheads being the status of the plaintiff as the successor-in-interest of Shri Ramkumar Agarwal, agreed to be decided afresh by impleading Ramkumar Agarwal as defendant no.3, it would be in the interest of all the parties that these petitions are disposed off by continuing the stay to the impugned

orders as well as by staying further hearing of Appeal No.77 of 2004. This would also take care of the challenge raised in Writ Petition No.4393 of 2006 by Shri Ramkumar Agarwal and in Writ Petition No.2822 of 2006 by the company - M/s. Luster Box Manufacturing Company Pvt. Ltd.

5. Hence by consent the petitions are disposed off by the following directions:

(a) The plaintiff in RAE Suit No.426/1095 of 1995 shall make an application in the said suit to implead Shri Ramkumar Agarwal as defendant no.3 and defendant nos.1 and 2 will not oppose the said application. Such application shall be submitted within two weeks from today before the Small Causes Court at Mumbai.

(b) Issue of Shri Ramesh Chandra Gurbaxrai Gupta @ Agarwal being successor-in-interest of Shri Ramkumar Agarwal in the suit property shall be decided afresh on the basis of the oral as well as documentary evidence that the parties may lead before the trial Court and by taking into consideration the rival submissions addressed across the bar, along with all other issues.

(c) The issue of jurisdiction of the Small Causes Court to entertain the suit filed by Shri Ramesh Chandra Gurbaxrai Gupta @ Agarwal shall also be heard and decided afresh along with all other disputes on the basis of the evidence and the arguments of the parties.

(d) The stay order granted in Writ Petition No. 4393 of 2006 shall continue to operate.

(e) The parties shall maintain status quo in respect of the suit property and none of them will create any third party interest by any modes unless the leave of the trial Court is obtained.

(f) The stay granted in Writ Petition No.6967 of 1998 as well as in Writ Petition No.3153 of 1997 shall stand vacated so far as the suit proceedings are concerned.

(g) The order of amendment granted by the Small Causes Court arising out of Appeal No.77 of 2004 allowing the name of Shri Ramkumar Agarwal to be substituted by Shri Ramesh Chandra Agarwal will

remain stayed during the trial of the suit.

(h) The amendment allowed by the order dated 6/5/1997 by the trial Court so as to incorporate the schedule annexed to the amendment as part of the plaint will be subject to the trial Court's finding on the issue of jurisdiction.

(h) Trial of the suit is expedited and it be heard and decided preferably by 31st December 2007.

6. Writ to go forthwith.

(B.H.MARL